

ESTTA Tracking number: **ESTTA422509**

Filing date: **07/29/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	New York Yankees Partnership
Granted to Date of previous extension	07/31/2011
Address	Executive Offices, Yankee Stadium One East 161st Street New York, NY 10451 UNITED STATES

Name	Major League Baseball Properties, Inc.		
Entity	Corporation	Citizenship	New York
Address	245 Park Avenue New York, NY 10167 UNITED STATES		

Attorney information	Elise Kasell Cowan, Liebowitz & Latman 1133 Avenue of the Americas New York, NY 10036 UNITED STATES eck@cll.com, jmn@cll.com, trademark@cll.com Phone:212-790-9200
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Applicant Information

Application No	85108184	Publication date	02/01/2011
Opposition Filing Date	07/29/2011	Opposition Period Ends	07/31/2011
Applicant	Palazzolo, Thomas P.O. Box 83 Williston Park, NY 11596 UNITED STATES		

Goods/Services Affected by Opposition

Class 025.

All goods and services in the class are opposed, namely: Clothing, namely, hats, caps, scarves, shirts, t-shirts, pants, jeans, underwear, shorts, socks, footwear, ear muffs, gloves, mittens, coats, leggings, swimwear, wristbands, headbands, jerseys, sweat shirts, polo shirts, ponchos, tank tops and sleepwear

Grounds for Opposition

Other	see attached pleading
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Attachments	Letter to Commissioner BLEACHER CREATURES (Palazzolo) NOO.pdf (1 page)(68830 bytes) BLEACHER CREATURES (Palazzolo) Notice of Opposition.pdf (7 pages)(35012 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Elise Kasell/
Name	Elise Kasell
Date	07/29/2011



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July 29, 2011

By Electronic Filing

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Re: New York Yankees Partnership and Major League Baseball
Properties, Inc.
Consolidated Notice of Opposition Against Thomas Palazzolo
Application to register BLEACHER CREATURES
Ref. No. 21307.033

Dear Commissioner:

We enclose a Consolidated Notice of Opposition against Application Serial Number 85/108,184 published in the Official Gazette on February 1, 2011. Contemporaneously with the electronic filing of this Consolidated Notice of Opposition, we are arranging for an electronic payment in the amount of \$600 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Elise C. Kasell/
Elise C. Kasell

Enclosures

cc: Ms. Diane Kovach (w/encs.)
Mary L. Kevlin, Esq. (w/encs.)
Richard S. Mandel, Esq. (w/encs.)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/108,184
Filed: August 16, 2010
For Mark: BLEACHER CREATURES
Published in the Official Gazette: February 1, 2011

NEW YORK YANKEES PARTNERSHIP and
MAJOR LEAGUE BASEBALL PROPERTIES,
INC.,

Opposers,

V.

THOMAS PALAZZOLO,

Applicant.

Consolidated Opposition No.

CONSOLIDATED NOTICE OF OPPOSITION

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, New York Yankees Partnership, an Ohio limited partnership, with offices at Executive Offices, Yankee Stadium, One East 161st Street, Bronx, New York 10451 (“Yankees”), and Opposer, Major League Baseball Properties, Inc., a New York corporation, with offices at 245 Park Avenue, New York, NY 10167 (“MLBP”) (collectively, Opposer Yankees and Opposer MLBP will be referred to as “Opposers”), believe that they will be damaged by registration of the standard character word mark BLEACHER CREATURES in International Class 25 for “Clothing, namely, hats, caps, scarves, shirts, t-shirts, pants, jeans, underwear, shorts, socks, footwear, ear muffs, gloves, mittens, coats, leggings, swimwear, wristbands, headbands, jerseys, sweat shirts, polo shirts, ponchos, tank tops and sleepwear” as shown in Application Serial No. 85/108,184 (the “Application”). Opposer Yankees has been

granted extensions of time to oppose up to and including July 31, 2011, and Opposers hereby oppose the Application.

As grounds for the consolidated opposition, it is alleged that:

1. Opposer New York Yankees Partnership is the owner of the renowned NEW YORK YANKEES MAJOR LEAGUE BASEBALL club (the “Club”).
2. Opposer MLBP is indirectly owned by each of the thirty Major League Baseball clubs (the “MLB Clubs”), including Opposer Yankees, acts as the licensing agent for and is also a licensee of the MLB Clubs, including Opposer Yankees. Opposer MLBP is responsible for the enforcement, protection and licensing of the trademarks of each of the MLB Clubs, including Opposer Yankees.
3. The Club is one of the most successful sports franchises in the history of the United States with numerous appearances in annual WORLD SERIES CHAMPIONSHIP games and twenty-seven WORLD SERIES titles. In addition to its baseball entertainment services, the Club is now and long has been widely known in the United States for a wide variety of Club-branded merchandise, including, but not limited to apparel, including, but not limited to hats, caps, scarves, shirts, t-shirts, underwear, pants, shorts, socks, footwear, gloves, mittens, coats, swimwear, wristbands, headbands, jerseys, sweat shirts, polo shirts, ponchos, tank tops and sleepwear.
4. Since 1923, the Club has played its home games at its YANKEE STADIUM ballpark. The original YANKEE STADIUM ballpark was built in 1923 and, in 2009, the new YANKEE STADIUM ballpark opened across the street from the 1923 ballpark. The YANKEE STADIUM ballparks are two of the most famous and iconic of all the baseball stadiums used by the thirty MAJOR LEAGUE BASEBALL clubs.

5. For decades and since long prior to August 16, 2010, Applicant's constructive first use date, there has been a section of the outfield seating in YANKEE STADIUM ballpark – formerly in the Club's original YANKEE STADIUM ballpark and presently in the Club's new YANKEE STADIUM ballpark – where bleacher seats (unlike the individual seats in the rest of the ballpark) house a group of the Club's fans and season ticket holders who are drawn to the unique experience and characteristics offered by that section of the ballpark. This seating area and its attendant culture, which encompasses, among other things, avid fans, certain traditions and longstanding rivalries, has been fostered by the Club and has subsequently come to be known as the BLEACHER CREATURES section by fans, the press, the media and the public. The BLEACHER CREATURES section, located at Section 203 of the new YANKEE STADIUM ballpark is a unique ballpark experience available through season-ticket privileges that have become highly desirable to various groups of fans of the Club.

6. The Club's players interact with fans sitting in the BLEACHER CREATURES section in YANKEE STADIUM ballpark in a ritual called "Roll Call," at the beginning of every home game after the Club's starting pitcher throws the first pitch, in which the names of the YANKEES starting lineup players are chanted and then acknowledged by the other players. YANKEES players sometimes even sit in the BLEACHER CREATURES section of YANKEE STADIUM ballpark and participate in the chanting.

7. By virtue of the aforementioned facts, Applicant's Mark BLEACHER CREATURES is so closely associated with the BLEACHER CREATURES section of the Club's YANKEE STADIUM ballpark and the Club, that Applicant's Mark points uniquely to the BLEACHER CREATURES section of the Club's YANKEE STADIUM ballpark and,

consequently, to Opposer Yankees, such that when Applicant's Mark is used in connection with the applied-for goods, a connection with Opposers would be presumed.

8. On August 16, 2010, Applicant filed the Application for the standard character word mark BLEACHER CREATURES for "Clothing, namely, hats, caps, scarves, shirts, t-shirts, pants, jeans, underwear, shorts, socks, footwear, ear muffs, gloves, mittens, coats, leggings, swimwear, wristbands, headbands, jerseys, sweat shirts, polo shirts, ponchos, tank tops and sleepwear" in International Class 25, based on an intent to use.

9. Upon information and belief, Applicant did not use the mark BLEACHER CREATURES for the goods covered in the Application in United States commerce prior to his constructive first use date of August 16, 2010.

10. Upon information and belief, Applicant's intent to associate its mark with Opposer Yankees is made clear by its use on Applicant's website www.bleachercreaturesusa.com and on the goods being sold or offered for sale on that site, which feature the term BLEACHER CREATURES in connection with designs that are associated with the Club. One of Applicant's t-shirts which is for sale on Applicant's website features a woman wearing a bikini bearing the signature blue and white pinstripes design of the Club's uniform trade dress, holding a baseball bat and sitting on a baseball with the shape of a



baseball diamond behind her, as shown here, . The Club, its predecessors, and their affiliated and related entities, licensees and/or sponsors have long used pinstripe design elements as part of the Club's home uniforms. Indeed, apart from minor changes, the Club's

home uniform featuring its characteristic pinstripes trade dress has been primarily the same since 1936. Opposer Yankees owns a United States federal registration for its uniform pinstripes design mark in International Class 41, namely, Registration No. 2,029,421, for “entertainment services in the nature of baseball games and exhibitions.” Given this longstanding, well-known and consistent use of such an iconic feature of its uniforms since long prior Applicant’s constructive first use date, the Club has been commonly and extensively referred to by the press, media, fans and the public by the designation “PINSTripES” in addition to its name, NEW YORK YANKEES. This widespread public usage of the “PINSTripES” nickname inures to the benefit of Opposer Yankees. Upon information and belief, Applicant’s combined use of the mark BLEACHER CREATURES along with a “pinstripes” design element together with baseball indicia, such as a depiction of a baseball, a baseball bat and a baseball diamond evidences Applicant’s intention to suggest a connection between him and Opposers.

11. Opposers would be injured by the granting of a certificate of registration to Applicant because Applicant’s BLEACHER CREATURES mark, which is identical to the BLEACHERS CREATURES sections of the past and current YANKEE STADIUM ballparks and which points uniquely to Opposer Yankees, when used in connection with the applied-for goods, would falsely suggest a connection between Applicant, who has no connection with or authorization from Opposers, and Opposers.

WHEREFORE, Opposers believe that they will be damaged by registration of Applicant’s BLEACHER CREATURES mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposers in this proceeding Mary L. Kevlin, Richard S. Mandel and Elise C. Kasell (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
July 29, 2011

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposers

By: /Elise C. Kasell/

Mary L. Kevlin
Richard S. Mandel
Elise C. Kasell
1133 Avenue of the Americas
New York, New York 10036
(212)790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 29, 2011, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant, Thomas Palazzolo, PO Box 83, Williston Park, New York 11596-0083 and a courtesy copy to Applicant's counsel, Robert Vella, Pillari, Vella and Palacios by email at rmvellajr@hotmail.com.

/Elise C. Kasell/
Elise C. Kasell